

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PAUL F. ELY

Plaintiff,

v.

UNITED STATES POSTAL SERVICE

Defendant.

3:10-cv-0550-LRH-RAM

ORDER

Before the court is plaintiff Paul F. Ely's ("Ely") motion to reconsider the court's December 14, 2010 order granting defendant United States Postal Service's ("USPS") motion to dismiss (Doc. #9¹). Doc. #10. The USPS filed an opposition (Doc. #12) to which Ely replied (Doc. #13).

Ely allegedly sent a package containing roughly \$3000.00 in gold through defendant USPS. Ely purchased insurance for the package which was lost in transit. Ely demanded the value of the missing package per the insurance agreement and USPS refused. Ely subsequently filed a complaint against defendant USPS for breach of contract. Thereafter, defendant USPS filed a motion to dismiss (Doc. #7) to which Ely did not file a response.

On December 14, 2010, the court granted the USPS's motion to dismiss finding that

¹ Refers to the court's docketing number.

1 dismissal was warranted under *Ghazali v. Moran*, 46 F.3d 52 (9th Cir. 1995), for Ely's failure to
2 file an opposition. Doc. #9. Thereafter, Ely filed the present motion for reconsideration arguing
3 that there was good cause for his failure to file an opposition and that the court should grant an
4 extension of time for him to file an opposition to the motion to dismiss. *See* Doc. #10.

5 The court has reviewed the documents and pleadings on file in this matter and finds that
6 there is good cause warranting reconsideration of the court's order. First, Ely alleges that he was in
7 contact with defense counsel at the time this action was removed and thought that the motion to
8 dismiss concerned dismissal of the action in state court and not dismissal of the action in its
9 entirety. Second, Ely, who is not represented by counsel, has shown a willingness to continue
10 litigating this action as indicated by his motion and reply. *See* Doc. ##10, 13. Finally, the court's
11 order of dismissal was based upon Ely's failure to oppose the USPS' motion and did not address
12 the merits of the motion. Therefore, based on the record before the court, and in light of the
13 circumstances surrounding this action, the court finds that reconsideration of the court's order is
14 appropriate.

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16 IT IS THEREFORE ORDERED that plaintiff's motion for reconsideration (Doc. #10) is
17 GRANTED. The clerk of court is directed to re-open this action, 3:10-cv-0550-LRH-RAM.

18 IT IS FURTHER ORDERED that plaintiff shall have twenty (20) days from entry of this
19 order to file a response to defendant's motion to dismiss (Doc. #7). Defendant shall have ten (10)
20 days from plaintiff's response to file a reply.

21 IT IS SO ORDERED.

22 DATED this 22nd day of February, 2011.



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25 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE